

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MILTON GIBSON, ANITA SEVERN, AMOS  
MCPHERSON, WILLIAM FISHER, DAVID  
WILBURN, LOUIS BECOATS, WADELL  
FLETCHER, PAUL MULNIX, JOHN MCCOMB,  
GARY THORNBURG, MICHAEL TROTTER,  
and LAVERNE SEBERT,

UNPUBLISHED  
February 15, 2007

Plaintiffs-Appellees,

v

CINCINNATI MILACRON, a/k/a CINCINNATI  
MILACRON MARKETING COMPANY, a/k/a  
CINCINNATI MILACRON PRODUCTS  
DIVISION,

No. 269965  
Genesee Circuit Court  
LC No. 99-066596-NO

Defendant-Appellant.

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Before: Cavanagh, P.J., and Murphy and Meter, JJ.

PER CURIAM.

In this products liability action, defendant appeals by leave granted an order of the trial court denying its motion for summary disposition under MCR 2.116(C)(7) solely in regard to plaintiffs Louis Becoats, John McComb, Paul Mulnix, Gary Thornburg, Michael Trotter, and David Wilburn. Defendant argued that the claims of these particular plaintiffs were time-barred. The trial court concluded that a genuine issue of material fact existed with respect to when these plaintiffs should have discovered their injuries and the causal link to defendant's product. We reverse.

This appeal arises out of a products liability lawsuit brought by General Motors (GM) employees against defendant, a manufacturer of metalworking fluids used by GM in its assembly and production processes. Because grinding, cutting, and boring methods used in the production of metal parts generate tremendous heat and abrasion, metalworking fluid is sprayed onto the work surface, cooling and providing lubrication. Plaintiffs alleged that they suffered from respiratory ailments and other illnesses as a result of their exposure to defendant's metalworking fluids during their employment with GM. Suit was initiated on November 5, 1999, and an amended complaint adding plaintiffs Becoats, McComb, Mulnix, Thornburg, Trotter, and

Wilburn as parties was filed on January 24, 2000. The parties do not dispute that, for purposes of determining whether plaintiffs' claims are barred by the statute of limitations, the date of the amended complaint is the relevant date to consider.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Similarly, we review de novo the legal question concerning whether the applicable statute of limitations bars a cause of action. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997). MCR 2.116(C)(7) applies to a motion for summary disposition predicated on an argument that the action is time-barred. Under (C)(7), this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. *Sewell v Southfield Pub Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). This Court must consider the documentary evidence in a light most favorable to the nonmoving party. *Herman v Detroit*, 261 Mich App 141, 143-144; 680 NW2d 71 (2004). If there is no factual dispute and reasonable minds cannot differ on the legal effect of the facts, whether a plaintiff's claim is time-barred or precluded by any other theory set forth in MCR 2.116(C)(7) is a question of law for the court to decide. *Farm Bureau Mut Ins v Combustion Research Corp*, 255 Mich App 715, 720; 662 NW2d 439 (2003); *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 377; 532 NW2d 541 (1995). However, if a factual dispute exists, such as to matters regarding whether a plaintiff discovered or should have discovered a possible cause of action relative to accrual of a limitations period, summary disposition is not appropriate. *Id.*; *Mascarenas v Union Carbide Corp*, 196 Mich App 240, 245; 492 NW2d 512 (1992).

The statute of limitations in a products liability action is three years. MCL 600.5805(13). In general, "the period of limitations runs from the time the claim accrues." MCL 600.5827. Furthermore, a "claim accrues at the time provided in [MCL 600.5829] to [MCL 600.5838], and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827. No argument is made by the parties that any of the provisions set forth in MCL 600.5829 through MCL 600.5838 are applicable to our analysis.

In *Moll v Abbott Laboratories*, 444 Mich 1, 12; 506 NW2d 816 (1993), a products liability case, our Supreme Court stated that the term "wrong" as used in the general accrual statute, MCL 600.5827, "specified the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which the defendant breached his duty." This is no benefit to plaintiffs here because they allegedly suffered harm from defendant's breach more than three years before the amended complaint was filed. However, the *Moll* Court additionally noted that "our concern about barring a plaintiff's cause of action prematurely has led to our adoption of the discovery rule under proper circumstances." *Moll, supra* at 12. Pursuant to the discovery rule, "the plaintiff's claim accrues when the plaintiff discovers, or through the exercise of reasonable diligence, should have discovered, the two later occurring elements: (1) an injury, and (2) the causal connection between plaintiff's injury and the defendant's breach." *Id.* at 16. Rejecting an argument that a plaintiff should first know the "likely cause" of an injury, the Supreme Court

ruled, “Once a claimant is aware of an injury and its *possible* cause, the plaintiff is aware of a possible cause of action[,]” thereby triggering the commencement of the applicable limitations period. *Id.* at 23-24 (emphasis added). The plaintiff need not know the details of the evidence by which to establish the cause of action. *Id.* at 24. A cause of action is not held in abeyance until the plaintiff obtains professional assistance to determine the existence of the cause of action. *Mascarenas, supra* at 245. The *Mascarenas* panel indicated that the discovery rule is used to measure “the accrual date of latent occupational diseases in products liability cases.” *Id.* at 244.

With these guiding principles in mind, we now turn to the documentary evidence regarding the individual plaintiffs involved in this appeal.

#### A. *Louis Becoats*

Becoats worked for GM from 1976 to 1997, and he started suffering breathing and respiratory problems in the 1980s. He was on sick leave because of these problems from 1986 to 1993. Although Becoats testified that his pulmonary lung disease was attributed to the dust in the plant and was never expressly linked to metalworking fluids, he also stated that when he returned to work in 1993 as a tool grinder, he “knew that OSHA was saying stuff like that wasn’t good for you.” Becoats noted that in the 1980s GM started instructing workers to wear masks while operating machinery to limit exposure to the metalworking fluid mists. Becoats expressly stated that he “knew about it” and “stayed away from” the metalworking fluids. He also made complaints about ventilation related to the fluids after he became supervisor in the 1990s, and expressly associated his disease with exposure to the fumes. We conclude, therefore, that Becoats was aware of his respiratory injury in the 1980s and that he discovered or should have discovered the possible causal connection between the injury and the metalworking fluids around that same time period, and certainly long before January 1997, which was three years before the complaint was filed. Thus, because he did not file suit until 2000, the trial court erred by denying summary disposition as to Becoats’s claim.<sup>1</sup>

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<sup>1</sup> We note that, in general, there was evidence of a 1985 UAW-GM handbook regarding workplace hazards that identified the potential adverse health effects of exposure to metalworking fluids, evidence of a GM training program that included a video devoted to potential health risks associated with exposure to metalworking fluid mist, and evidence of a 1984 UAW newsletter listing metalworking fluids as a health risk in that they could cause skin, nose, eye, and throat irritation, allergic reactions, and increase cancer rates. Also, there was evidence of a 1985 UAW newsletter indicating that metalworking fluids and mists can be hazardous to workers’ health and need to be controlled, evidence of a study (Harvard study) conducted in the 1980s by a health and advisory board that was jointly established by the UAW and GM, which showed the adverse health effects of exposure to metalworking fluids, and evidence of a 1990 GM-UAW collective bargaining agreement that acknowledged a need to focus on the adverse health effects of metalworking fluids, and which further indicated that  
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### B. John McComb

McComb worked for GM until 1992. According to McComb, he started getting a cough in 1988 or 1989 that continued to worsen. In 1989, 30 percent of his lungs was removed due to the presence of an abnormal growth. McComb asserted that he suffers shortness of breath due to the lung removal, an injury he now attributes to metalworking fluid exposure. Although he testified that he attended GM hazard communication training, he also claimed that he was never given any information from GM or his union regarding the hazards of working with metalworking fluids. However, McComb also indicated that he was aware that fellow employees were complaining in the 1980s about work conditions, demanding better ventilation in the work areas because of the problem of exposure to metalworking fluids and mists, which you could see in the air according to McComb. We conclude, therefore, that McComb was aware of his injury in 1988-1989 and that he discovered, or should have discovered through the exercise of reasonable diligence, the possible causal connection between the injury and the metalworking fluids long before January 1997. Thus, the trial court erred in denying defendant's motion for summary disposition with respect to McComb.

### C. Paul Mulnix

Mulnix testified that on October 21, 1992, he was injured when he breathed PCB contaminated air in the plant. Mulnix stated that the symptoms he experienced following the accident—lack of breath, sweats, vomiting, burning in the throat and lungs, dizziness, disorientation, high blood pressure, skipped heart beats, lung damage, and chest pains—were symptoms that he suffered all at once that day. However, Mulnix also testified that although these symptoms had improved from the time of the original injury in 1992, they had “very slowly, but progressively been getting worse and worse every year.” Mulnix further testified regarding recurrent breathing problems in the early 1990s and that he was diagnosed as suffering from chronic obstructive pulmonary disorder and emphysema in 1992. His doctor thought or believed that the cause of the emphysema was his smoking, the poor air quality where he worked, and exposure to workplace fluids. Mulnix was confronted with a 1992 document from his employment record, which indicated that he had claimed that exposure to oil mist and

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“[m]edical surveillance for respiratory effects of machining fluids will be offered to employees who regularly work in operations with machining fluids.” All subsequent GM-UAW collective bargaining agreements contained similar provisions. Further, in 1990, every UAW member was sent *Solidarity* magazine that noted the dangers of metalworking fluids, and a 1994 issue of the magazine stated that “there is now sufficient evidence to conclude that exposure to machine fluids poses a risk of occupational cancer and respiratory illness.” In a 1992 union newsletter, the findings from the above-referenced Harvard study were summarized, explaining that the study “confirms long-standing concerns of the UAW for dangers of exposures in machining operations,” that the “findings are a cause for concern for our members in machining operations,” and that “now that we are aware of the connection between exposure and illness, we can do something about the future.” Accordingly, there was a plethora of information available in the 1980s and 1990s regarding the possible adverse health effects of exposure to metalworking fluids.

foundry dust caused his emphysema. Mulnix acknowledged the document, and he stated that he had indeed attributed his emphysema to, in part, oil mist, which he explained encompassed hydraulic and motor oils and metalworking fluids. We conclude, therefore, that Mulnix was aware of his injuries in 1992 and that he discovered the possible causal connection between the injuries and the metalworking fluids in 1992, long before January 1997. Thus, the trial court erred in denying defendant's motion for summary disposition with respect to McComb.

#### *D. Gary Thornburg*

Thornburg testified that his physician told him in 1988 that his exposure to metalworking fluid mists might be "aggravating or causing" his breathing problem. Additionally, Thornburg stated that the "heavy, wet mist" made him physically ill, and that "you just kind of thought that that was probably what was doing it." Furthermore, Thornburg testified that he knew health concerns about the mists were discussed in the late 1980s and early 1990s. In 1988 or 1989, he even went so far as to request a study on the mist because of the breathing problems he suffered at the time. Thornburg testified that in 1988 his physician placed him on restrictions with respect to exposure to "dust and the air and mist," suggesting a connection between Thornburg's injury and the fluid mist. Accordingly, the trial court erred in denying summary disposition as to Thornburg's claim.

#### *E. Michael Trotter*

Trotter testified that he had worked at GM and was exposed to metalworking fluids and mists throughout the 1980s. In the late 1980s, he experienced headaches and nosebleeds at work that he determined were caused by inhalation of metalworking fluid mist. Trotter subsequently suffered from coughing and shortness of breath. In December 1989, he requested a transfer to a different plant because, in part, he wanted to avoid any further exposure to metalworking fluids in light of his concerns about their danger. In December 1991, Trotter was diagnosed with obstructive airway disease, and in 1993 or 1994, he was diagnosed with sarcoidosis, which his doctor explained was quite possibly caused by exposure to metalworking fluids. We conclude, therefore, that Trotter was aware of his respiratory injuries in the early 1990s and that he discovered or should have discovered the possible causal connection between the injuries and the metalworking fluids around that same time, and most certainly long before January 1997. Thus, the trial court erred in denying defendant's motion for summary disposition with respect to Trotter.

#### *F. David Wilburn*

Wilburn testified that he was exposed to metalworking fluids and the mist they created and that he first suffered injury in 1991 or 1992. Wilburn testified that he was given "quite a bit of training" on all types of fluids, including training involving health and exposure issues with respect to metalworking fluids. Wilburn also stated that he changed plants in 1994 due to his exposure to metalworking fluids and expressly stated that in the mid to late 1980s he attributed his trouble breathing to exposure to metalworking fluids. These facts indicate that Wilburn knew his injury was caused by the exposure to these fluids. The fact that his physician has told him that his shortness of breath is related to his weight, congestive heart failure, and the fact that he

smoked for several years, does not undermine the conclusion that he knew or reasonably should have known of the possible cause of his injury. Thus, the trial court erred in denying summary disposition as to Wilburn's claim.

We reverse and remand for entry of judgment in favor of defendant with respect to plaintiffs involved in this appeal. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ William B. Murphy  
/s/ Patrick M. Meter